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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
| 087713, 928 | 09/13/96 | RADIN | D 7956-011 |

PENNIE & EDMONDS
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HM11/1109

EXAMINER

KEMMERER, E

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
| 1646 | |

DATE MAILED: 11/09/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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|------------------------------|--|-------------------------------------|
| Office Action Summary | Application No. 08/713,928 | Applicant(s) Radin et al. |
| | Examiner Elizabeth C. Kemmerer | Group Art Unit 1646 |

Responsive to communication(s) filed on Aug 17, 1998.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-18, 20-34, 36-49, and 51-76 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) 1-18, 20-34, 36-49, 51-64, and 66-76 is/are allowed.

Claim(s) 65 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Status of Application, Amendments, And/Or Claims

The amendment filed 17 August 1998 (Paper No. 13) has been entered in full. Claims 19, 35, and 50 are canceled. Claims 1-18, 20-34, 36-49, and 51-76 are under examination.

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 17 August 1998 have been approved. When formal drawings are submitted, the formal drawings are required to reflect the proposed corrections.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Withdrawn Objections And/Or Rejections

The rejection of claims 22-24 and 36-38 under 35 U.S.C. § 112, first paragraph, regarding biological deposits, as set forth at pp. 3-5 of the previous Office Action (Paper No. 11, 17 February 1998) is *withdrawn* in view of Applicant's amendments and supporting documents perfecting the deposit (filed with Paper No. 13, 17 August 1998).

The rejection of claims 1-21, 25-35, and 39-50 under 35 U.S.C. § 112, first paragraph, as set forth at pp. 5-7 of the previous Office Action (Paper No. 11, 17 February 1998) is *withdrawn* in view of the amended and canceled claims (Paper No. 13, 17 August 1998).

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The rejection of claim 24 under 35 U.S.C. § 112, second paragraph, as set forth at p. 7 of the previous Office Action (Paper No. 11, 17 February 1998) is *withdrawn* in view of the amended claim (Paper No. 13, 17 August 1998).

The objection to claims 8, 20, 21, 39, 45, and 46 for informalities as set forth at p. 8 of the previous Office Action (Paper No. 11, 17 February 1998) is *withdrawn* in view of the amended claims (Paper No. 13, 17 August 1998).

The application is now in compliance with the sequence rules.

35 U.S.C. § 112, Second Paragraph

Claim 65 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is no antecedent basis for “the recombinant expression construct” in claim 54, from which claim 65 depends. It appears that this may have arisen due to a clerical error in claim 65, wherein claim 65 should have depended from claims 10, 11, 14, 16, 17, 55, or 57.

Conclusion

Claims 1-18, 20-34, 36-49, 51-64, and 66-76 are allowable. Claim 65 is not allowable. Attempts were made by the Examiner to contact Attorneys George Jen and Laura Corruzi on 06 November 1998 in order to propose an Examiner’s Amendment to overcome the rejection of claim 65 under 35 U.S.C. § 112, second paragraph. However, contact was not successfully established.

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Applicant is invited to telephone the Examiner at the numbers below to arrange for an interview, during which the proposed Examiner's Amendment may be discussed. If approved during the course of the interview, the Examiner may enter the Examiner's Amendment and pass the application to issue.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth C. Kemmerer, Ph.D., whose telephone number is (703) 308-2673. The examiner can normally be reached on Mondays through Thursdays from 6:30 a.m. to 4:00 p.m. The examiner can also normally be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lila Feisee, can be reached on (703) 308-2731.

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Official papers filed by fax should be directed to (703) 308-4242. Faxed draft or informal communications with the examiner should be directed to (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Elizabeth C. Kemmerer

ELIZABETH KEMMERER
PRIMARY EXAMINER

ECK
November 9, 1998